

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

NIGHT BOX  
FILED

NOV 10 2003

CLARENCE MADDOX  
CLERK, USDC / SDFL / MIA

AMAZON.COM, INC., a  
Delaware corporation,

Plaintiff,

CASE NO.: 03-22270-CIV-GOLD

v.

Magistrate Judge Simonton

ROCKIN TIME HOLDINGS, INC.,  
a Florida corporation, and JOHN  
DOES 1-20,  
Defendants.

**DEFENDANT ROCKIN TIME HOLDINGS, INC.'S VERIFIED COUNTERCLAIM**

Defendant/Counter-Plaintiff Rockin Time Holdings, Inc. ("RTHI"), pursuant to Federal Rule of Civil Procedure 13, sues plaintiff Amazon.com, Inc. ("Amazon") as follows.

**FACTS**

1. On August 25, 2003, Amazon filed the underlying complaint ("Complaint") against RTHI and unknown defendants identified as "DOES 1-20" ("Doe Defendants").
2. The Complaint alleges that RTHI and the Doe Defendants "created and sent large volumes of e-mail messages advertising their penis enlargement product," and that "[s]ome of the e-mails were designed so that they appeared to be sent from Amazon.com, and used the AMAZON.com® mark in the e-mail headers as the 'from' address." See Complaint, ¶ 22. The conduct alleged by Amazon is known in the computer trade as "spoofing." As evidence of its claim, Amazon attached to its Complaint as Exhibit A an alleged spoofed e-mail containing an advertisement for a product known as "Gain Pro Penile Pills." See *id.*, Exhibit A.

11/10/03  
WJC

3. RTHI does not sell, market, or distribute and/or have any association with the product known as "Gain Pro Penile Pills."

4. Based on the alleged "spoofing," Amazon asserted against all defendants statutory claims under 15 U.S.C. §§ 1114 and 1125 for trademark infringement, false designation of origin, cyberpiracy and unfair competition, and common law claims for unfair competition and trespass to chattels.

5. The allegations in the Complaint as they relate to RTHI are false, and were known, and/or should have been known, to be false when made.

6. On August 26, 2003, Amazon issued a press release ("Press Release"), which was distributed to various print, media, broadcasting and internet outlets, and published and re-published via, among other outlets, the world-wide web. A copy of the press release is attached as *Exhibit 1*.

7. The Press Release, as it relates to RTHI, is false and defamatory. Among other things, the Press Release accuses RTHI of engaging in "Email Forgeries" and being an "Email Forger" and/or "spoofers;" describes RTHI as "one of the [eleven] email forgers identified by Amazon.com;" and implies that RTHI, among others, is a target of a joint effort by the New York Attorney General and Amazon "to Combat Email Forgeries." Further, it expressly describes "spoofing" as "an *illegal*, deceptive online marketing ploy that conceals the true identity of an email sender and instead falsely identifies someone else as the sender." Press Release (emphasis added).

8. An Amazon corporate representative is quoted in the Press Release:

Spoofers lie about who's really sending these emails . . . . *Spoofing is forgery*, and we're going after spoofers to the full extent of the law. . . . Spoofing is a problem faced by any company with a trusted domain name that uses e-mail to

communicate with its customers. It's not just spam; *it's consumer fraud*. And the actions taken today by Amazon.com and by the state of New York will send a strong message to anyone engaged in this conduct that it will not be tolerated."

*Id.* (emphasis added).

9. The Press Release then lists eleven lawsuits filed by Amazon, including RTHI:

[RTHI], a Miami Beach, Florida-based operation touting "Gain Pro Penile Pills" through email designed to appear from 'Andrea C. Valenzuela' (andrea.cvalenzuela3@amazon.com) and similar nonexistent amazon.com email addresses."

*Id.*

10. The Press Release then states that the "lawsuits [including the expressly referenced complaint against RTHI, which contains false statements against RTHI] will be available online at [www.amazon.com/stops spoofing](http://www.amazon.com/stops spoofing)." *Id.*

11. At or about the same time, Amazon created its [www.amazon.com/stops spoofing](http://www.amazon.com/stops spoofing) webpage ("Stop Spoofing Webpage"), which contains false and defamatory statements about RTHI. A copy of the contents of the Stop Spoofing Webpage is attached as *Exhibit 2*. The Stop Spoofing Webpage remains on-line as of the date of this Counterclaim.

12. The Stop Spoofing Webpage, which is accessible by a world-wide audience, begins by stating the Amazon "is determined to crack down on and eliminate e-mail forgeries, also known as 'spoofing,' that affect the company. To learn more about this effort, click here." Stop Spoofing Webpage (emphasis in original). The "click here" reference is a link to the defamatory Press Release. Further, the Stop Spoofing Webpage, which expressly references RTHI and provides a link to the Complaint against RTHI, accuses RTHI of engaging in "Deceptive E-mail Forgery (Spoofing)" and "fraudulent

behavior,” and describes RTHI as a “deceptive online marketer” who “forge[s] e-mail to make it look as though it is from Amazon.com.” *Id.*

13. The statements and/or implications regarding RTHI set forth in the content of the Press Release and the Stop Spoofing Webpage – both of which provide links to the Complaint against RTHI, which contains false allegations against RTHI – are false, and were known, and/or should have been known, by Amazon to be false when made.

14. RTHI does not and has not engaged in the conduct set forth in the Complaint, Press Release and/or Stop Spoofing Webpage.

15. As a direct and proximate result of the false statements contained in the Press Release and Stop Spoofing Webpage (which expressly reference and/or provide links to the false allegations of the complaint), RTHI is a pariah in its community and in the industry, as it is now known as an “illegal spoof.” As a result, RTHI has, *inter alia*, suffered a significant decline in revenues and a significant increase in hosting costs associated with its websites. Its ability to obtain financing has been severely hindered, and a good portion of its customers, vendors and independent contractors no longer want to engage in business with and/or be associated with them.

16. The statements contained in the Press Release and Stop Spoofing Webpage (both of which expressly reference and/or provide links to the false allegations of the Complaint) are defamatory per se.

17. The statements contained in the Press Release and Stop Spoofing Webpage (both of which expressly reference and/or provide links to the false allegations of the Complaint) are still being published and/or re-published (in whole and/or in part)

to a world-wide audience as of the date of this Counterclaim. Further, Amazon knows and/or should know that the contents of the Press Release and Stop Spoofing Webpage (both of which expressly reference and/or provide links to the false allegations of the Complaint) as they relate to RTHI are false, but continues to publish them and/or cause them to be re-published.

18. All conditions precedent to bringing this action have been performed, waived and/or otherwise satisfied.

19. RTHI has retained the undersigned firm of attorneys to represent it in this action and is obligated to pay the firm a reasonable fee for the firm's services and to reimburse the firm for all costs and litigation expenses paid or advanced on behalf of RTHI.

#### **Defamation**

20. RTHI realleges the allegations set forth in ¶¶ 1 through 19.

21. Amazon intentionally, knowingly, negligently and/or with reckless regard for the truth published and/or caused to be re-published false and defamatory statements about RTHI in its Press Release and Stop Spoofing Webpage (both of which expressly reference and/or provide links to the false allegations of the complaint). The defamatory statements were intended to expose, and in fact have exposed, RTHI to hatred, ridicule and contempt. Further, the defamatory statements accused RTHI of "illegal" (*i.e.*, criminal) acts, and were intended to injure, and in fact have injured, RTHI's business reputation and severely damaged RTHI's business.

22. Amazon's publication and the reasonably foreseeable re-publication of the defamatory statements were and remain unprivileged.

23. As a direct and proximate result of Amazon's conduct, RTHI has been damaged generally and specially.

24. The conduct of Amazon was done deliberately, willfully, maliciously, recklessly and with gross, willful and wanton disregard for the rights of RTHI.

WHEREFORE, defendant/counter-plaintiff Rockin Time Holdings, Inc. demands the entry of a judgment in its favor and against plaintiff/counter-defendant Amazon.com for damages, punitive damages, interest, costs, attorney's fees, and such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

RTHI demands a trial by jury on all issues so triable.

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the allegations and statements contained in the Verified Complaint (other than those statements alleged to be defamatory) are true and correct and based on my personal knowledge and/or information provided to me.

Dated: November 10, 2003.

\_\_\_\_\_  
David Burstyn, Vice President  
Rockin Time Holdings, Inc.

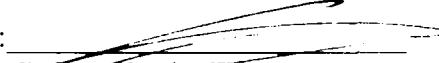
Dated: November 10, 2003.

Respectfully submitted,

**STACK FERNANDEZ ANDERSON  
& HARRIS, P.A.**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. mail this 10<sup>th</sup> day of November, 2003 to:

Harry R. Schafer, Esq.  
KENNY NACHWALTER SEYMOUR ARNOLD  
CRITCHLOW & SPECTOR, P.A.  
1100 Miami Center  
201 South Biscayne Boulevard  
Miami, FL 33131-4327  
Tel. 305.373.1000  
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By:   
Robert Harris

# amzn investor relations

## Press Releases

### Amazon.com Teams with New York Attorney General to Combat Email Forgeries

#### Eleven U.S. and Canadian Lawsuits Seek Millions in Punitive Damages from Email Forgers Who Disguise Their Emails to Impersonate Amazon.com

SEATTLE, Aug 26, 2003 -- Amazon.com (Nasdaq:AMZN) today and Monday filed federal lawsuits in the United States and Canada seeking to restrain 11 online marketers from sending email forgeries falsely labeled as coming from Amazon.com. As a deterrent to others, the suits also seek millions of dollars in punitive damages.

Simultaneously, the New York Attorney General's office has announced a settlement of civil fraud charges with one of the email forgers identified by Amazon.com. The agreement followed an investigation conducted with Amazon.com's cooperation. The settlement agreement prohibits **Cyebye.com** from using third parties' names to market, unless the company obtains authority to do so. The company is also required to keep records of all commercial emails during the next two years and provide the Attorney General's office with regular updates of its compliance with the settlement. **Cyebye.com** must pay \$10,000 in penalties to the State of New York.

Amazon.com has also reached a settlement in principle with **Cyebye.com**. The agreement prohibits **Cyebye.com** from sending e-mail messages of any kind that include the Amazon.com name in any way without specific authorization from Amazon.com. The agreement also includes payment by **Cyebye.com** of monetary damages.

The Amazon.com lawsuits are only part of a broader company initiative to crack down on and eliminate email forgeries, also known as "spoofing," that affect the company. Spoofing is an illegal, deceptive online marketing ploy that conceals the true identity of an email sender and instead falsely identifies someone else as the sender.

"Spoofers lie about who's really sending these emails," said David Zapsky, Amazon.com Vice President and Associate General Counsel. "Spoofing is forgery, and we're going after spoofers to the full extent of the law."

Zapsky said the company has set up a special email account, stop-spoofing@amazon.com, for consumers to report suspected spoofing involving Amazon.com or to turn in email forgers posing as amazon.com.

Amazon.com is not the only trusted domain name that spoofers have abused with their email forgeries.

**EXHIBIT**

1

According to Zapsky, "Spoofing is a problem faced by any company with a trusted domain name that uses e-mail to communicate with its customers. It's not just spam; it's consumer fraud. And the actions taken today by Amazon.com and by the state of New York will send a strong message to anyone engaged in this conduct that it will not be tolerated."

The lawsuits filed in seven Federal district courts in the United States and in the Ontario Superior Court of Justice in Canada make claims against:

- E.B.A. Wholesale Corp. (d/b/a Cyebye.com), an appliance retailer in Brooklyn, NY, which promoted its home appliances through email appearing to come from "Amazon.Com" (cyebye@cyebye.com)." This lawsuit has been settled as described above.
- Several unidentified defendants who participated in an email scheme advertising "Healthproductsnow.net," which advertises a "human growth hormone" to treat a variety of ills, via email supposedly originating from "Keith Tori" (YBCOt5fmD@amazon.com) and similar nonexistent amazon.com email addresses.
- Rockin Time Holdings, Inc., a Miami Beach, Florida-based operation touting "Gain Pro Penile Pills" through email designed to appear from "Andrea C. Valenzuela" (andrea.cvalenzuela3@amazon.com) and similar nonexistent amazon.com email addresses.
- Royal Responder, a Fort Collins, Colorado, company, and Jay Unzicker of Arizona who advertised tools for creating and sending spam through email appearing to originate at "Jay U" (tifqixcnti@amazon.com) and similar nonexistent amazon.com email addresses.
- Cyberpower Pty., Ltd., and several unidentified defendants who participated in an email scheme advertising GrantGiveaways.com, a website offering "Free Cash Grants, Never Repay," through unsolicited email supposedly sent by "Eddy" (HfCdnGUDBdt9A9@amazon.com) and similar nonexistent amazon.com email addresses.
- Several unidentified defendants who participated in an email scheme advertising ImmunoShield, an immune system enhancing liquid spray created by Enzymatic Therapy, Inc., a Green Bay, Wisconsin, company, through emails appearing to come from "Marie" (2c4O446r@amazon.com) and similar nonexistent amazon.com email addresses.
- 1505820 Ontario, Inc., an Ontario, Canada, corporation operating "Jsuati.com," which collects email addresses of consumers who attempt to opt out of receiving spoofed messages designed to appear as if they originated at "Fran K. Stuart" (fstuart\_47@amazon.com) and similar nonexistent amazon.com email addresses.
- Several unidentified defendants who participated in an email scheme advertising "Cheapfilter.com," a website offering a device that purportedly allows the consumer to receive Pay-Per-View channels "completely free," through emails appearing to originate at "Douglas" (evAdt@amazon.com) and similar nonexistent

- amazon.com email addresses.
- Edward Davidson, an individual residing in Florida who advertised "VP-RX" penile pills through emails appearing to be sent by "Connor Long" (connorlong68@amazon.com) and similar nonexistent amazon.com email addresses.
- Matrix Consulting Group, LLC, a Wisconsin company that participated in an email scheme advertising "GainPro" penile pills through unsolicited emails supposedly sent by "Katherine Anderson" (kanderson@amazon.com) and similar nonexistent amazon.com email addresses.
- Daniel Byron Black, a California resident who sent emails advertising extended automobile warranties through unsolicited emails supposedly sent by "Arnold Jeff" (fr0QisehgaWh@amazon.com) and similar nonexistent amazon.com email addresses.

The lawsuits will be available online at [www.amazon.com/stops spoofing](http://www.amazon.com/stops spoofing). In addition to the lawsuits, Amazon.com:

- Will continue to investigate and take legal action against those who use Amazon.com's name to send deceptive email.
- Has begun working with several internet service providers and other owners of trusted domain names in an attempt to explore and promote technical solutions that would make it more difficult to deliver a spoofed e-mail message to unsuspecting consumers.
- Will continue to support federal anti-spam legislation that would impose tough penalties against spoofing and similar deceptive email practices.

#### About Amazon.com

Amazon.com, a Fortune 500 company based in Seattle, opened its virtual doors on the World Wide Web in July 1995 and today offers Earth's Biggest Selection. Amazon.com seeks to be Earth's most customer-centric company, where customers can find and discover anything they might want to buy online, and endeavors to offer its customers the lowest possible prices. Amazon.com and sellers list millions of unique new and used items in categories such as apparel and accessories, electronics, computers, kitchenware and housewares, books, music, DVDs, videos, cameras and photo items, toys, baby items and baby registry, software, computer and video games, cell phones and service, tools and hardware, travel services, magazine subscriptions and outdoor living items.

Amazon.com operates five international Web sites: [www.amazon.co.uk](http://www.amazon.co.uk), [www.amazon.de](http://www.amazon.de), [www.amazon.fr](http://www.amazon.fr), [www.amazon.co.jp](http://www.amazon.co.jp) and [www.amazon.ca](http://www.amazon.ca).

This announcement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Actual results may differ significantly from management's expectations. These forward-looking statements involve risks and uncertainties that include, among others, risks related to potential future losses, significant amount of

indebtedness, competition, commercial agreements and strategic alliances, seasonality, potential fluctuations in operating results and rate of growth, foreign exchange rates, management of potential growth, system interruption, international expansion, consumer trends, inventory, fulfillment center optimization, limited operating history, government regulation and taxation, fraud, and new business areas. More information about factors that potentially could affect Amazon.com's financial results is included in Amazon.com's filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the year ended December 31, 2002, and all subsequent filings.

SOURCE: Amazon.com

TOP ^



News provided by COMTEX. User agreement applies



Help > Privacy & Security > **Stop Spoofing**

## Help Stop Deceptive E-mail Forgery ("Spoofing")

Amazon.com is determined to crack down on and eliminate e-mail forgeries, also known as "spoofing," that affect the company. To learn more about this effort, [click here](#).

### Legal Action

On Monday, August 25, 2003, Amazon.com filed 11 lawsuits in the United States and Canada against deceptive online marketers who forge e-mail to make it look as though it is from Amazon.com. Through these lawsuits, Amazon.com seeks to restrain these defendants from sending e-mail forgeries falsely labeled as coming from Amazon.com. Amazon.com also seeks punitive damages in order to deter others from similarly fraudulent behavior.

For more details, you can view the complaints here:

#### District of Arizona

[Amazon.com, Inc. v. Royal Responder, Inc.; James "Jay" Unzicker, et al.](#), Federal District Court for the District of Arizona in Phoenix.

#### Northern District of California

[Amazon.com, Inc. v. Daniel Byron Black, et al.](#), Federal District Court for the Northern District of California in San Francisco.

#### Southern District of Florida

[Amazon.com, Inc. v. Rockin Time Holdings, Inc., et al.](#), Federal District Court for the Southern District of Florida, in Miami.

[Amazon.com, Inc. v. Edward Davidson, et al.](#), Federal District Court for the Southern District of Florida in Miami.

#### Southern District of New York

[Amazon.com, Inc. v. E.B.A. Wholesale Corp. \(d/b/a Cyebye.com\)](#), Federal District Court for the Southern District of New York.

#### Western District of Washington

[Amazon.com, Inc. v. John Does 1-20 d/b/a healthproductsnow.net](#), Federal District Court for the Western District of Washington in Seattle.

**EXHIBIT 2**

Amazon.com, Inc. v. Cyberpower Pty, Ltd., et al., Federal District Court for the Western District of Washington in Seattle.

Amazon.com, Inc. v. John Does 1-20, d/b/a cheapfilter.com, testfilters.net, filtercable.net, filtercable.com, filterppv.com, Federal District Court for the Western District of Washington in Seattle.

## **Eastern District of Wisconsin**

Amazon.com, Inc. v. John Does 1-20, Federal District Court for the Eastern District of Wisconsin.

Amazon.com, Inc. v. Matrix Consulting Group, L.L.C., et al., Federal District Court for the Eastern District of Wisconsin.

## **Ontario Superior Court of Justice, Toronto, Canada**

Amazon.com, Inc. v. 1505820 Ontario Inc., c.o.b. Natural Grains Deli and Catering (Jsuati.com), Ontario Superior Court of Justice, Toronto, Canada.

## **How You Can Help**

### 1. Report spoofed e-mails to Amazon.com.

- Send the original spoofed e-mail as an attachment to stop-spoofing@amazon.com. Sending the e-mail as an attachment is the best way to preserve the "header information," which makes it easier for Amazon.com to trace the true origin of the forgery.
- If you cannot send the forged e-mail as an attachment, forward the e-mail to stop-spoofing@amazon.com, and include as much of the header information as you are able to maintain. To find the header information, configure your e-mail program to show All Headers (this varies from program to program). The headers we need are well labeled and look something like this:

X-Sender: someone@domain.com  
X-Sender-IP: [10.1.2.3]  
X-Date: Tue, 08 Apr 2003 21:02:08 +0000 (UTC)  
X-Recipient: you@domain.com  
X-OUID: 1

- Please understand that Amazon.com will not be able to respond to all of the e-mails it receives through the stop-spoofing@amazon.com mailbox. If you have specific questions about an order or other customer service concerns, check the Help section of our Web site.

### 2. Never respond to requests for personal information that may be contained in the forged e-mail. Likewise, never follow any instructions contained in the forged e-mail that claim to provide a method for "unsubscribing." Many spammers use these "unsubscribe" processes to create a list of valid, working e-mail addresses.

Did this help? Continue shopping.

Still have questions? Search help or contact us.

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- See our animated demo!

**Shipping & Returns**

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- Return an item (here's our Returns Policy).

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- Forgot your password? Click here.
- Redeem or buy a gift certificate.
- Visit our Help department.

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